ANG SWEE CHUAN

v.

LIM TENG HUAN

COURT OF APPEAL, BRUNEI DARUSSALAM
TI LIANG YANG P
RG PENLINGTON (COMMISSIONER)
AM MCMULLIN (COMMISSIONER)
[CIVIL APPEAL NO. 1 OF 1991]
14 NOVEMBER 1991

PARTNERSHIP: *Dissolution of partnership - Whether agreement settled all claims - Is interest payable on money owed - Should defendant pay plaintiff's costs.*

The plaintiff and defendant were partners in a number of business ventures. By 1985 relationship between plaintiff and defendant had deteriorated to a considerable extent. As a result, on 13 November 1985, they entered into an agreement for the settlement of "the affairs in the partnership". By Clause 1 of the agreement the plaintiff was to retire and withdraw from the partnership firm called Eng Huat Trading Co. (Eng Huat) and the defendant was to retain full and complete ownership of it. By the same clause the plaintiff was to retain full and complete ownership of the firm called Clover Company (Clover). It is common ground that Eng Huat owed Clover B$290,403.93. The defendant claimed that the, agreement constituted a settlement of all claims by the partners upon each other, in the sense that the debt in question was extinguished.

The plaintiff appealed against the Chief Justice's decision when he held that by the agreement all the debts owed by one partner to the other were extinguished and no longer payable. Further an interest at the rate of six percent per annum was awarded on the sum of B$306,924.24 owed by the plaintiff to the defendant.

The defendant cross-appealed against the order that he should pay one half of the plaintiff's costs in the Court below.

Held:

[1] Whatever was the main object of the agreement, it seems clear it was not the object to discharge the outstanding debts between the partners. The agreement does not make any mention about cancellation or extinguishment of inter-partnership debts - A matter of sufficient importance to merit some clear mention to be made particularly between partners whose relationship was not the happiest.

[2] The general rule at common law is that interest is not payable on a debt or loan in the absence of express agreement or some course of dealing or custom of that effect. In the present case there was neither express agreement or course of dealing. However s. 3 of the Law Reform (Miscellaneous Provisions) Act 1934, empowers the Court to grant interest at such rate as it thinks fit.

[3] In the light of plaintiff's appeal for claim of B$290,403.93 was allowed, coupled with order for account, the defendant should pay one-half of the plaintiff's costs on the claim in Court below.

[Plaintiffs appeal partially allowed. Defendants cross-appeal dismissed.]

Cases referred to:
Prenn v. Simmonds [1971] 3 All ER 237 ***(foll)***
Anglo-Cyprian Trade Agencies v. Paphos Wine Industries Ltd. [1951] 1 All ER 873 ***(cons)***
Alltrans Express v. CVA Holdings [1984] 1 All ER 685 ***(cons)***

Legislation referred to:
Emergency (Fatal Accidents and Personal Inquires) Order 1991 [Brunei], ss. 2, 23
Law Reform (Miscellaneous Provisions) Act 1934 [UK], s. 3

JUDGMENT

Ti Liang Yang P:

This case concerns a partnership dispute between the plaintiff and the defendant, who were partners in a number of business ventures. In a judgment delivered on 2 February 1991, the learned Chief Justice made certain orders in favour of the defendant. The plaintiff now appeals against that judgment, with a cross-appeal from the defendant.

The partnership began in 1968, with other partners who have since retired. By 1985, relationship between the plaintiff and the defendant had deteriorated to a considerable extent. The result was that on 13 November 1985, they entered into an agreement for the settlement of "the affair in the partnership". The bulk of this appeal turns on the effect of that agreement (herein after referred to as "the agreement").

The Agreement

By the agreement, the two partners agreed to "settle, divide and distribute the business, property, assets and responsibilities in the manner as follows".

By Clause 1 of the agreement, the plaintiff was to retire and withdraw from the partnership firm called the Eng Huat Trading Company (Eng Huat), and the defendant was "to retain full and complete ownership/proprietorship" upon payment of B$500,000 to the plaintiff. In consideration of this sum of money, the plaintiff was deemed to have "retired and withdrawn from the said trading partnership" as at 1 August 1985. The sum of B$500,000 was to be paid by a first instalment of B$100,000 forthwith, followed by three equal monthly instalments of B$50,000 each, and a final instalment of B$250,000, which "shall be deemed to be part payment of ASC's (the plaintiff's) account with" Eng Huat. Though the agreement makes no mention of it, this reference to part payment concerns a sum of B$740,942.37 which the plaintiff, using the name of his personal firm called Ching Chuan (not a partnership business), borrowed from Eng Huat for the purpose of building his own residence. The B$250,000 was therefore part payment of a personal debt having nothing to do with the partnership of the plaintiff and the defendant.

By the same clause and for the same consideration, the plaintiff was to retain full and complete ownership/proprietorship of the firm called Clover Company (Clover) and the defendant was to retain full and complete ownership/proprietorship of the firm called Ming Thai.

Clause 2 provides that as at 1 August 1985 all the real property which had been developed, that is, Lots 8511, 8512 and 8513 was to be divided between the two partners "in equal share".

Clause 3 provides that all other landed property, namely Lots 7772, 1132, 2020 and 11741 "shall be owned ... in equal share" by the two partners. The four lots under this clause were vacant and undeveloped.

Clause 4 provides that all existing loans with bankers of Eng Huat shall be borne by the two partners "in equal share", and the current account of Eng Huat "shall be operated and responsible" by the defendant solely, and the plaintiff "shall execute all papers to that effect".

By Clause 5, the two partners "shall each be responsible for and promptly discharges (*sic*) his own obligations and liabilities with its (*sic*) bankers and creditors and each shall indemnify the other for default made thereof".

Clause 6, obliges the partners to consult two named mediators in case of dispute.

Whilst the learned Chief Justice found that this agreement was intended to end the partnership and the partners thereafter assumed that their partnership was at an end, and acted as if this was so, he nevertheless concluded that the dissolution of the partnership was limited. He said:

> I believe that the agreement was intended to achieve, and did achieve by its terms:
>
> (a) A dissolution of the existing partnership in Eng Huat as from 1 August 1985;
>
> (b) The vesting of the trading business of Eng Huat and Ming Thai in the defendant from that date;
>
> (c) The vesting of the business of Clover in the plaintiff from that date.

Thus the Chief Justice was in effect saying that the dissolution was confined to Eng Huat's trading activities, so it would seem the remaining part of the partnership continued. But the judgment went on to find:

> a **new** (emphasis supplied) partnership must have arisen (which I shall call the '*ad hoc* partnership') in relation to the real estate, which was to be held 'in equal share'.

And finally the Chief Justice found:

> There were too many matters which were not dealt with for me to conclude that there was a dissolution of the entire partnership of Eng Huat. I believe that an *ad hoc* partnership did come into existence on 13 November, in relation only to the landed properties.

With great respect, it is not entirely clear whether the finding was that the partnership as a whole came to an end and a new, more limited partnership, called the *ad hoc* partnership, came into being, or whether only part of the partnership came to an end, with a re-structuring or re-organisation of the partnership, limited to real property only. If the dissolution was only partial, no new partnership was needed. It would then be a continuation of the same partnership, with its activities much reduced and confined to real property only.

However, I do not think it necessary for me for the purpose of this appeal, to attempt to resolve the question as to whether the partnership had been dissolved, wholly or in part. The plaintiff in his appeal makes two complaints only, three other grounds of appeal, which would have occupied much of our time, having been abandoned, namely ground 3 (relating to the issue of dissolution of the partnership), ground 4 (relating to the allegations of fraud and misrepresentation on the part of the defendant) and ground 5 (relating to the question of the giving of a full and proper partnership account by the defendant).

The Issues

The first of the two complaints raised in the plaintiff's appeal concerns the Chief Justice's dismissal of his claim of B$290,403.93 which Eng Huat admittedly owed Clover. The second complaint is that the Chief Justice erred in awarding interest on the sum of B$306,924.24 awarded to the defendant at the rate of six percent per annum.

The defendant by his cross-appeal claims that the Chief Justice erred in principle when he ordered that the defendant should pay one half of the plaintiff's costs in the Court below.

The Clover - Claim

It is common ground that Eng Huat owed Clover B$290,403.93. The defendant's case is that the agreement constituted a settlement of all claims by the partners upon each other, in the sense that the debt in question was extinguished .

The sum of B$290,403.93 forms part of B$429,453.93 which Clover claimed from Eng Huat (*vide* para. 22 of the statement of claim). For reasons which we need not go into here, the plaintiff now says, for the purpose of this appeal and without making any concession, he is seeking an order for the payment of the lesser sum by Eng Huat.

It will be seen, from a list of creditors handed by the defendant to the plaintiff prior to the signing of the agreement, that as at 31 July 1985 Eng Huat owed Clover the sum of B$290,403.93. The Chief Justice found that by the agreement all accounts which were outstanding on 31 July 1985, including those between Eng Huat and Clover, were deemed to be settled. He also found that the plaintiff knew about the substantial debt Eng Huat owed Clover at the time of the agreement but raised no objection at the time. The plaintiff must therefore assume that all accounts to that date were correct. In other words, all the debts owed by one partner to the other were extinguished and no longer payable. The plaintiff, however, argues that the debt of B$290,403.93 was still extant and payable.

In construing the agreement I respectfully follow the judgment in *Prenn v. Simmonds* [1971] 3 All ER 237, at 239-241, but I do not see the need to go outside the agreement and seek help from the " factual matrix" in ascertaining the object of the agreement. Whatever its main object, it seems clear that it was not the object to discharge the outstanding debts between the partners. The agreement does not refer to the discharge of outstanding debts between the partners in specific terms. However, it makes fairly detailed stipulations about Eng Huat, Clover and Ming Thai. It provides for the way in which the developed as well as vacant lots were to be dealt with. It does not, however, make any mention about cancellation or extinguishment of inter-partnership debts - a matter of sufficient importance to merit some clear mention to be made, particularly between partners whose relationship was not the happiest. Newman leading Counsel for the plaintiff, relies on Clause 5 of the agreement (*supra*) in support of his submission that outstanding debts were not wiped off. He argues - and I agree with him - that clause 5 provides for each partner to discharge his own obligations and liabilities with his bankers and "his creditors", and such creditors would include the other partner. The clause therefore covers all outstanding partnership debts. The provision for indemnity in the case of a debt owed by one partner to the other is not as strange as it might at first view appear. There may indeed be cases where, indemnity is payable. For example, the provision for mutual indemnities could provide an additional safeguard against possible loss to one partner consequent upon the default of the other partner in relation to one of **his** unsatisfied creditors who, after the splitting up of the partnership, recovered his debt in an action against the "innocent" partner, the action having been instituted prior to severing of the partnership. If thereafter the "innocent partner" was unable to complete some transaction with a third party because of his having had to satisfy his former partner's debt, then, he would be entitled to proceed against the other not merely to recover the whole of the sum he had been compelled to pay on his behalf but also for such consequential damage as he might have suffered through his default to that third party.

As has been indicated, the learned Chief Justice found that by the agreement the outstanding "accounts" on 31 July 1985 were deemed to be settled , and that the plaintiff must assume that for all purposes, "all accounts" to that date were correct. This is, however, very far from saying that any outstanding debts ceased to be repayable.

I do not find anything in the agreement which supports the claim that the sum now claimed by Clover, *viz* ., B$290,403.93 was extinguished. The agreement made no arrangements for the payment or non-payment of the debt. In my judgment that sum remains owing and payable.

It remains for me to consider the question of interest on this sum, which I shall discuss below:

The Interest

It is the case for the plaintiff that the Chief Justice erred in awarding interest to the defendant on the sum of B$306,924.24 which was admittedly owing by the plaintiff.

No argument was ever advanced on this question and there was no basis for allowing interest. It is true that at common law, the general rule is that interest is not payable on a debt or loan in the absence of express agreement or some course of dealing or custom of that effect. In the present case there was neither express agreement or course of dealing which the defendant can rely on.

Sir Michael Ogden, leading Counsel for the defendant , however, draws our attention to s. 3 of the Law Reform (Miscellaneous Provisions) Act 1934, (hereafter called "the 1934 Act") which provides that in any proceedings for the recovery of any debt the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit.

It is not disputed that the Act was applicable in Brunei Darussalam until 1 February 1991, one day prior to the Chief Justice's judgment. On that day the Emergency (Fatal Accidents and Personal Injuries) order 1991 came into force.

Section 2 of the Order provides that this order shall apply to any action commenced after the date of commencement of this order, whether the cause of action accrued before or after such date. It would therefore appear that the order does not apply to the present action which commenced in 1987. By s. 23 a number of United Kingdom Acts, including the 1934 Act, shall cease to apply in this country. I do not think that the power of the Court to award interest under the 1934 Act may be taken away by a side wind and without some specific provision to that effect. In my view, the order for interest was properly made.

The Costs in the Court Below

The plaintiff makes no complaint of the Chief Justice's order for costs in favour of the defendant on the counterclaim of B$306,924.24.

There is however a cross-appeal against the order that the defendant should pay one half of the plaintiff's costs on the claim. By a separate judgment on certain ancillary orders, dated 9 January 1991, the learned Chief Justice ordered one-half of the costs in favour of the plaintiff. The reason he gave for this order was that the plaintiff had been successful in part of his claim, namely, that a limited account should be rendered only if those transactions related to the real property contained in the agreement and which took place after 31 July 1985.

The plaintiff however failed to persuade the Chief Justice that Eng Huat owed Clover anything after the date of the agreement. A sum amounting to B$150,000 payable by instalments to the plaintiff under Clause 1 of the agreement (*supra*) was admitted to be owing by the defendant, accordingly it was ordered that this sum be set off against the total claim by the defendant. The judgment then went on to take note that the plaintiff failed to prove he was

misled by the defendant into entering the agreement by virtue of any alleged false accounting by the defendant, nor that he did not know the true amount of the building contract in respect of Lot 8511. Recognising that this must be rough measure in some respects, the learned Chief Justice made the order for costs he did.

It is not disputed that the bulk of the eleven-day hearing in Court below was devoted to examination of witnesses on the question of fraud and misrepresentation, on which points the plaintiff failed. Sir Michael, for defendant, argues that the plaintiff had lost on every point pleaded and all the substantial points argued. It is also argued that the defendant was never asked for accounts in respect of real property under the *ad hoc* partnership, nor was such a claim pleaded. By para. 9 of the statement of claim; it was pleaded that by Clause 4 (a) of the agreement the plaintiff and the defendant agreed that all existing loans with the bankers of Eng Huat should be borne by them in equal shares. And by his prayer No. (2) the plaintiff claims under para. 9 "an order for all necessary accounts and inquiries as there set out". Counsel for the defendant in the Court below addressed the Chief Justice on this point, and stressed that that point was only raised in the final speech of plaintiff 's Counsel .Had the plaintiff alleged that he was dissatisfied, the defendant would have consented to an order in the terms of that made in the event the order asked for under para. 9 in relation to Eng Huat was not made.

Of course when the Chief Registrar comes to deal with the matter he will no doubt take into account the wider inquiry implied by the finding of the Chief Justice relating to the matters not dealt with in Civil Suit 384 of 1985 in relation to the developed lots.

Sir Michael submits that the order relating to the undeveloped lots was unnecessary, and should not have resulted in costs being made against the defendant. In the light of all the circumstances the order for account is valueless, and the *de minimus* rule should apply, for the plaintiff's success in this regard has no substance.

The real property comprised in the order for account consists of the three developed lots and the four vacant lots. In an earlier action between the same parties, Civil Suit No. 384 of 1986, an order by consent was made for an account of maintenance, bank loans and expenses in respect of the flats and buildings on the three developed lots, namely, Lots 8511, 8512 and 8513. The Chief Justice was of the opinion that that order was not sufficiently comprehensive in that it did not include such items as drainage systems, common services, upkeep of roads and paths and any interest payable to the banks. As to the vacant lots, namely, Lots 7772, 1132, 2020, and 11741, there was no evidence that the plaintiff thought or suspected there had been any payments or receipts of money in respect of these lots since 31 July 1985. It is therefore argued that in the absence of any evidence that the order for account would serve a useful purpose, such order should not have been made. There are no cost implications in respect of those lots.

The gravamen of the debate before this Court is the value of the order for accounts. Mr. Newman submits that the consent order in Civil Suit No. 384 of 1986 was not comprehensive and it was necessary for the Chief Justice in his order to enlarge upon the consent order and add to it other considerations which were necessary and significant.

In my judgment the value of the order for account, whilst not minuscule, is slight, and certainly not one which warrants half the plaintiff's costs being awarded: *Anglo - Cyprian Trade Agencies v. Paphos Wine Industries Ltd.* [1951] 1 All ER 873, and *Alltrans Express v. CVA Holdings* [1984] 1 All ER 685 considered.

The learned Chief Justice, with respect, does not appear to have considered the issue as to the value of the account; it is to this extent that his exercise of discretion may be criticised. In all the circumstances, if the order for a limited account was all that the plaintiff succeeded in obtaining, an order for the defendant to pay one-tenths of the plaintiff's costs would not be unfair.

However in the light of my judgment of the sum of B$290,403.93 in favour of the plaintiff, coupled with the order for account, I would order that the defendant should pay one-half the plaintiff's costs on the claim in the Court below.

The Mortgage on Lot 11741

Grounds 1 and 2 of the cross-appeal ask for the mortgage on this lot to be discharged and that the defendant or his nominee's name be registered "as owner in equal share".

We are told that no issue now arises as the mortgage has been discharged in October this year and the registration duly made. This question therefore need not detain us.

To sum up my decision thus far:

(1) the plaintiff succeeds on his appeal for B$290,403.93 on which there should be interest at the rate of six percent per annum as from 31 July 1985;

(2) the plaintiff's appeal against the order for interest fails;

(3) the cross-appeal on costs fails, and

(4) the cross-appeal on the mortgage of Lot 11741 no longer concerns this Court.

Costs on the Appeal and Cross-Appeal

In considering costs on this appeal, it has to be borne in mind the work which Counsel for the defendant must have gone into in preparation for grounds 3, 4 and 5 of the plaintiff's appeal, these grounds being abandoned only on the eve of the hearing of this appeal. Also, instead of insisting on a much wider account to be given by the defendant, Newman now accepts the order of a limited account he has obtained. The costs on the order for account, Sir Michael maintains, is *de minimus*. As to the interest issue, it is submitted on behalf of the plaintiff that the cost is neither enormous nor *de minimus*, and simply has to be put in the balance. And it is suggested that even if the plaintiff succeeds on the clover claim and the question of interests he should not obtain more than one-tenth of the costs.

Having considered all arguments, and taking into account those issues on which each party has succeeded or failed, I am of the view this is an appropriate case in which a broad brush approach may be adopted in respect of the vexed question of costs in this case, without entering into detailed considerations which may be finely balanced. I would make no order as to costs on the appeal and the cross-appeal.

RG Penlington C:

I agree with the judgment of Yang, P . So far as the debt of B$290,403.93 is concerned the parties must be bound by the terms of the agreement which was, *inter alia*, that the plaintiff took over Clover as a going concern, including all debts due to it unless otherwise provided for. That it seems to me must include the amount which it was agreed was owing by Eng Huat. As interest has been awarded on the debt owing by the plaintiff to Eng Huat, it is only just that the B$290,403.93 should also bear interest at the same rate from the date of the agreement.

The question of costs is not easy because of the nature of the awards and orders which have been made here and below. I accept what was said to us by Sir Michael Ogden that a very great deal of the time taken before the Chief Justice and in preparation for this appeal was due to the claim for an account in respect of the building on Lot 8511. I do however consider that the orders for costs here and below proposed by the learned President do reflect as much as is reasonably possible the amount of time spent and the relative success of the parties to this action.

AM McMullin C:

In this dispute between the former partners Ang Swee Chuan and Lim Teng Huan, we are concerned principally with that aspect of the partnership which related to the Eng Huat Trading Company and the Clover Trading Company and to a lesser degree with certain pieces of land acquired by the partners prior to the withdrawal of Ang Swee Chuan from that trading venture.

Of the many issues raised upon the pleadings and the consequent claims based thereon we are concerned, following full argument on the appeal and cross appeal, with 3 matters for determination.

The principal point remaining at issue is whether the learned Chief Justice was correct in finding that the agreement between the parties dated 13 November 1985, had the effect of extinguishing the debts owed by Eng Huat to the Clover Company, these companies having relapsed into the sole proprietorship of the respondent and the appellant respectively pursuant to that agreement. Secondly, whether he was entitled to impose an order for the payment of interest on the sum of B$306,924.24 awarded to the defendant on the footing of his counterclaim or upon the such sums as might be awarded by the Chief Registrar pursuant to an order for an account between the parties in relation to any transaction deriving from the real property which had formed part of the partnership property. Thirdly, whether the order for the payment of half the appellant's costs should stand.

The Agreement of 13 November 1985

It is not in dispute that for the purposes of this issue the summary of assets and liabilities of Eng Huat given to the appellant by the respondent prior to the signing of the agreement on 13 November (see pp. 94 and 97 of the Core bundle 'A ' in the appeal) was accepted by both parties as a sufficient statement of the company's financial position in relation to its creditors and debtors at 31 July 1985, the day prior to the date upon which, by the terms of para. 1(a) of the agreement, the appellant was deemed to have withdrawn from the partnership. No question is now raised as to the propriety of the finding by the learned Chief Justice at p. 26 of his judgment where he says:

I regard these accounts as sufficient to form the basis of a settlement between the parties.

What is in dispute is his finding on the effect of the agreement which he couched in the following terms (p.38):

> I have above decided that it was intended by the agreement that all accounts which were outstanding on 31 July 1985, including those between Eng Huat and Clover, were deemed to be settled.

Paragraph 5 of the agreement is in the following terms :

> L.T.H. and A.S.C. shall each be responsible for and promptly discharges his own obligations with its bankers and creditors and each shall indemnify the other for default made thereof "(L.T.H. and A.S.C. are of course, respectively, the appellant and respondent)".

The Clover Company and the Eng Huat Company were two of the trading ventures formerly carried on within the ambit of the partnership which was commenced in 1968. By the terms of agreement the respondent acquired sole ownership of Eng Huat and another company known as Ming Thai, and the appellant that of Clover . A sum of B$500,000 was to be paid by the respondent to the appellant by stated instalments by way of consideration, part of which was to be set off against moneys owed by the appellant to the Eng Huat Company.

Although in the statement of claim the amount said to be due to Clover from Eng Huat was B$429,453 this figure was based upon an entry in a ledger of the Eng Huat Company delivered to the appellant some time after the signing of the agreement. The same page in the ledger shows this larger sum offset by a credit in favour of Eng Huat in the amount of B$139,050 reducing the figure claimed to B$290,453. This figure is further reduced by a sum shown as a debit in the ledger of B$49 and the final sum is therefore B$290,493.

While not conceding outright that this latter rather than the former sum is the amount that should have been awarded to his client, Mr. Newman does not contest that the figure in the documents presented by the respondent to the appellant, prior to the signing of the agreement, shows that the debt owed by Eng Huat to clover is this lesser sum. Indeed in the plaintiff's own evidence (pp. 85 and 86 of the record) it is plain that that is the sum which the appellant believed to be due to his company, Clover.

Sir Michael Ogden has sought to persuade us that Clause 5 of the agreement is intended to cover only such liabilities as might, at the time of the agreement, exist between the former partnership companies and 3rd parties, that is creditors external to the partnership, but that liabilities existing between the 3 partnership companies *inter se* must be regarded as having been extinguished by mutual agreement. He points to the provisions of clause 1 (c) of the agreement which provides that the balance of B$250,000 remaining over after payment of the instalments set out in paras.(a) and (b) is to be applied to the payment in part of the appellant's account with the respondent's company. This he says shows that where any specific debt is to be dealt with in a certain way the agreement speaks; and where it is silent it must be assumed to mean that all other inter-partnership debts are simply cancelled .

This, Mr. Newman replies, sets the matter on its head. The debt referred to in para. (c) is a personal debt owing to the Eng Huat Company by the respondent.

The word " settled" used by the parties in the preamble to their agreement is a term susceptible of more than one interpretation and must be read in the context of the matrix of the whole agreement in accordance with the principles established in *Prenn v Simmonds* [1971] 3 AER 237. Thus read one must have regard to the statement of accounts which appears in the summary on pp. 94 and 97 of the core bundle and which was accepted by the parties as a sufficient statement of the existing state of affairs between Clover and Eng Huat on 31 July 1985. The debt referred to in para.1 (c) stands in a different category from those other debts and I think Mr. Newman must be right when he says that, read in the context of the presentation of accounts - The factual matrix of the agreement - The words in the preamble to the effect that the parties are "mutually agreed to settle divide and distribute the business, property, assets, and responsibilities ..." are clearly intended to oblige both parties to honour their mutual obligations. It may well be that in showing a 'nil' balance in the summary of accounts presented to the appellant subsequent to the signing of the agreement (see p. 105 of bundle A) the respondent intended to convey that his understanding of para. 5 was that mutual partnership debts were cancelled, but that was strongly disputed in evidence by the appellant and we are left with the agreement as it stands.

On this reading of the agreement therefore it clearly follows that the appellant is entitled to the award of a sum of B$293,453.73.

I agree with what has been said by my lord the learned President on the matter of interest and I wish to add nothing on that score.

As to the costs below, I accept the account given by Sir Michael Ogden of the course taken by the plaintiff at the trial in that Court - Indeed I do not think it has been disputed - And that a great part of the hearing was occupied by a vigorous pursuit of the fraud and misrepresentation issue which has now been abandoned. I had thought originally that, in view of that extended expedition through an issue which went against him the order made for payment of half the plaintiff's costs was very much on the generous side. He has now however succeeded in reversing his fortunes in this suit on a very substantial issue and notwithstanding that that issue may have occupied considerably less of the Court's time and Counsels' labours at the trial, I feel that the learned Chief Justice's 'rough measure' is justified in the altered circumstances and I would not therefore disturb the order which he made.

As the costs of the appeal and cross-appeal I agree with what had been said by the learned President and wish to add nothing further.

Also found at [1992] 1 CLJ 529